

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

JORGE NUNEZ,

PLAINTIFF,

V.

FIGHTING ORANGE, LLC.,

DEFENDANT.

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BY

DEPUTY

CAUSE NO. A-12-CV-321-LY

ORDER

Before the court is Plaintiff's Motion to Dismiss Defendant's Counterclaims filed July 17, 2012 (Doc. #6). Defendant's response was due July 31, 2012. *See* W.D. Tex. Local R. CV-7(e). To date, Defendant has not filed a response to the motion. Thus, pursuant to Local Rule CV-7(e), Plaintiff's motion may be granted as unopposed if review of the pleadings reveals that Defendant has failed to state a claim upon which relief can be granted. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Lone Star Fund V (U.S.), L.P. v. Barclay's Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010); *Cf. John v. La. Bd. of Trs. for State Colls. & Univs.*, 757 F.2d 698, 707-10 (5th Cir. 1985). Having reviewed the motion and the pleadings in this cause, the court finds that the motion to dismiss should be granted

The court finds that Defendant's counterclaim seeking sanctions should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim because Rule 11 of the Federal Rules of Civil Procedure does not create a separate cause of action or claim. *See Port Drum Co. V. Umphrey*, 852 F.2d 148 (5th Cir. 1988) . Accordingly,

IT IS ORDERED that Plaintiff's Motion to Dismiss Defendant's Counterclaims filed July 17, 2012 (Doc. #6) is **GRANTED**. Defendant's counterclaim seeking sanctions pursuant to Federal Rule of Civil Procedure 11 is **DISMISSED WITH PREJUDICE**.

SIGNED this 2nd day of August, 2012.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE